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opinion

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Attorney General

Concord

April 29, 1974

To the Honorable House of Representatives:

By resolution dated March 19, 1974, you have asked for our opinion upon the following question:

"Do the counties of New Hampshire have sufficient powers under the New Hampshire statutes to qualify as local units of government, and are county conventions separate, distinct and integral parts of county governments vis-a-vis, boards of aldermen in their relationship to city governments so that counties can be the local administering agent to carry out programs such as manpower training and to receive federal funds therefor under the provisions of the Federal Comprehensive Employment Training Act of 1973?"

Given the reference in your question to the Federal Comprehensive Employment Training Act of 1973, we assume that by use of the term "local unit of government", you are referring to the term "unit of general local government" as used in 29 U.S.C.A. 812 (a)(2), and as defined in 29 U.S.C.A. 981 (a)(10). In the latter section, "unit of general local government" is defined to mean:

"... any city, municipality, county, town, township, parish, village or other general purpose political subdivision which has the power to levy taxes and spend funds, as well as general corporate and police powers."

Counties in New Hampshire are creatures of statute. New Hampshire RSA 23:1 provides that:

"Each county is a body corporate for the purpose of suing and being sued, purchasing, holding and conveying real and personal estate for county purposes, making all necessary contracts and doing other necessary acts relating to the property and concerns of the county."

However, the New Hampshire Supreme Court has stated that:

"Declaring counties to be corporations does not confer upon them other powers or subject them to other duties than those which are conferred and imposed either by express provision of some statute or are implied from the general character and design of such public corporations." Eastman v. Meredith, 36 N.H. 284, 289; O'Brien v. Rockingham County, 80 N.H. 522, 522 (1923).

The powers of counties are set out in New Hampshire RSA 24:13. That section provides that:

"The power to raise county taxes, to make appropriations for the use of the county and to authorize the purchase of real estate for its use, the sale and conveyance of its real estate, the erection, enlargement or repair of its buildings exceeding an expense of one thousand dollars, and the issuing of bonds for its debts, shall be vested in the county convention."

The power to tax is further set out by New Hampshire RSA 24:20, which provides:

"The county convention shall, during each biennial session of the legislature, grant county taxes for its county for two years; but the tax for each year shall be voted separately and collected in the year for which it was voted."

Finally, the manner in which such taxes are collected is set out in New Hampshire RSA 29:11 which provides as follows:

"The treasurer shall issue his warrant to the selectmen of the several towns in the county liable to pay state taxes, requiring them to assess, collect, and pay to the treasurer, within such time as shall be therein directed, their just proportion of all taxes granted by the county convention, according to their proportion of public taxes for the time being, and shall enforce the collection and payment thereof, together with interest at ten per cent a year from December seventh upon all taxes not then paid, in the same manner as the state treasurer may enforce the collection of state taxes, and the county tax assessed against any town shall not be deemed paid until the whole amount of the warrant together with said interest from December seventh to the date of payment has been received by said treasurer."

A review of the Title II of the New Hampshire Revised Statutes Annotated dealing with county government reveals the following enumerated purposes and functions for which counties may raise and spend funds. While we do not assert that this listing is exhaustive of all permissible objects of county spending, it is sufficient to give an indication of the general scope of governmental power at the county level.

RSA 23:2 recreational purposes.

RSA 23:3 Building, e.g. courts, correctional facilities, registries of deeds and probate.

RSA 23:4,6; 24:13-a,b Various types of insurance.

RSA 23:5,9 (supp) Salaries of employees.

RSA 24:1 county convention defined.

24:10 raise supplemental money in support of
Smith-Lever Act (cooperative extension service)

24:13 powers of county conventions generally.

26:1 condemnation of land.

28:6 executive power to purchase and sell personal
property for county uses.

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of Representatives

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RSA 28:7 same as to real estate.
RSA 28:7-a extinguishing certain fires.
RSA 28:9 care and support of paupers.
RSA 28:10 (supp) employ clerks and agents.
RSA 28:11 (supp) maintain county farm and house of
correction.
RSA 29:11 treasurer to issue warrants and extents
for county taxes.
RSA 30:1 (supp) Officers to give reports.

We have set out above the statutory constitution and powers of counties under New Hampshire law insofar as they are pertinent to the terms of the definition of "unit of general local government" within the meaning of the Comprehensive Employment Training Act of 1973. An answer to the question "Are counties in New Hampshire units of general local government within the meaning of that term?" requires an interpretation of federal statute which is unusually difficult in view of the vagueness of the definition provided in the federal statute. Moreover, since the federal statute in question has application to units of government in many, if not all, of the United States, with wide variations in organization and makeup, such an interpretation can only be properly and consistently made by the federal agency charged with the administration of the statute.

Respectfully,

Warren B. Rudman
Attorney General

Charles G. Cleaveland
Attorney

CGC/tlr

Blind cc: Governor *Thomson*

Rep. Charles Cummings
Rock. 7
March 19, 1974

House Resolution

requesting an advisory opinion from the Attorney General relative to manpower training and other federal programs.

WHEREAS, the Federal Comprehensive Employment Training Act of 1973 provides that any local unit of government which qualifies under the provisions of said act may receive federal funds pursuant to said act; and

WHEREAS, because of the population requirements under said federal act, the only local units of government in New Hampshire which could meet such population requirements are counties; and

WHEREAS, the House of Representatives is not certain that under New Hampshire statutes counties have sufficient powers to qualify as such local units of government under the federal act;

NOW THEREFORE BE IT RESOLVED that the House of Representatives requests the Attorney General to give his opinion upon the following question to law:

A [Do the counties of New Hampshire have sufficient powers under the New Hampshire statutes to qualify as local units of government, and are county conventions separate, distinct and integral parts of county governments vis-a-vis, boards of aldermen in their relationship to city governments so that counties can be the local administering agent to carry out programs such as manpower training and to receive federal funds therefor under the provisions of the Federal Comprehensive Employment Training Act of 1973?]

Be It Further Resolved that the Clerk of the House is directed to send copies of this resolution to the Attorney General.